

BEFORE THE
SHORELINES HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF A SUBSTANTIAL
DEVELOPMENT PERMIT ISSUED TO
FAIRWAY MECHANICAL CONTRACTORS,
INC. by KITSAP COUNTY,

State of Washington, DEPARTMENT
OF ECOLOGY and SUQUAMISH TRIBE,

Appellants,

v.

KITSAP COUNTY and FAIRWAY
MECHANICAL CONTRACTORS, INC.,

Respondents.

SHB NO. 86-59 & 87-7

ORDER DENYING
MOTION TO SET
ASIDE DISMISSAL

On April 13, 1987, respondents Fairway Mechanical Contractors, Inc., and Kitsap County filed a Joint Motion to Set Aside the Board's Order of Dismissal and to Reinstate the Hearing Dates in SHB Nos. 86-59 and 87-7. On April 20, 1987, the Department of Ecology ("DOE") filed a Letter and Memorandum Opposing the Motion.

For the reasons set forth below, the Motion will be denied.

1 By way of background, the referenced Shorelines cases were timely
2 appealed by DOE and the Suquamish Tribe on November 24, 1986 from
3 Kitsap County's issuance of a shoreline substantial development permit
4 to Fairway Mechanical Contractors, Inc. The appeals were consolidated
5 by Order of the Board.

6 The proposed project, a two-story structure with an access road
7 and parking, is located on land between Kitsap Way and Chico Creek,
8 within the shorelines of the State of Washington, in an area
9 designated as semi-rural by the Kitsap County Shoreline Master Program.

10 A pre-hearing conference was held on February 23, 1987 before
11 Board Member Judith Bendor. All parties were represented. As a
12 result of the conference, the parties agreed to pursue settlement
13 discussions, and/or seek a conditional use permit from the County.
14 Appellant Fairway Mechanical has conceded that absent such a permit,
15 the proposed project could not be built on that site.

16 Predicated on the issuance of the conditional use permit by the
17 County, appellant Suquamish Tribe withdrew its appeal of the
18 substantial development permit on March 23, 1987. Similarly, on March
19 30, 1987, appellant DOE withdrew its appeal. All appellants having
20 withdrawn their appeals, and there being no cases in controversy, the
21 Board issued an Order Dismissing the appeals on April 1, 1987. On
22 April 13, 1987 respondent's Motion to Set Aside was filed with the
23 Board.

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1 Kitsap County has issued conditional use permit No. 469 to Fairway
2 Mechanical Contractors, Inc., which DOE has denied by letter dated
3 April 3, 1987. This denial has been separately appealed to the Board,
4 SHB No. 87-18, Kitsap County, et al. v. DOE. The Board, having
5 reviewed the file herein and being fully informed, reaches the
6 following conclusions:

7 1. An Order to Set Aside the previous dismissal is
8 inappropriate. Appellants in SHB Nos. 86-59 and 87-7 were DOE and the
9 Suquamish Tribe. Only the issuance of the substantial development
10 permit was involved. A conditional use permit was not at issue in
11 those appeals. DOE had no function to perform in the permit issuing
12 process.

13 With the withdrawal of the appeals by the appellants, there were
14 no cases in controversy before this Board and dismissal was
15 mandatory. WAC 461-08-010; CR 41(a). The dismissals, however, were
16 without prejudice.

17 2. In contrast Shoreline conditional use and variance permits,
18 not substantial development permits, are subject to approval or
19 disapproval by DOE. RCW 90.58.140(12). The Department's denial of
20 approval of these permits constitutes a final order for purposes of
21 appeal to this Board. In such cases the time for appeal starts to run
22 on the date DOE transmits its decision to the local government. RCW
23 90.58.140(6). Where, as here, there is an underlying substantial
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1 development permit, the time for appeal of that permit commences at
2 the same time. WAC 173-14-090.

3 3. Appeals of the conditional use permit were timely made by
4 Kitsap County and Fairway Mechanical Contractors (SHB 87-18). These
5 appeals appear to attempt to again put at issue the underlying
6 substantial development permit -- although it is unclear how the
7 present appellants object to that document.

8 4. The Board's rules provide that cross appeals may be filed
9 within 20 days after the date a request for review has been filed.
10 WAC 461-08-085. No cross appeal by respondent DOE seeking to
11 re-inject the substantial development permit into this new case has
12 been received. However, the parties appear to be in agreement that
13 the underlying substantial development permit has been placed before
14 us again in the second proceeding.

15 5. On the record before us, we conclude that no grounds for
16 setting aside our prior dismissal have been shown. The motion appears
17 less an attack on the propriety of that dismissal than an attempt to
18 preserve a pre-existing case schedule -- a schedule which the Board
19 has long since filled with other matters seen as no less pressing by
20 the parties to them.

21 6. We urge the parties to clarify for us by appropriate motion or
22 amendment of pleadings in SHB 87-18 those matters which they seek to
23 have heard as respects either of the shorelines permits pertaining to
24 this project.

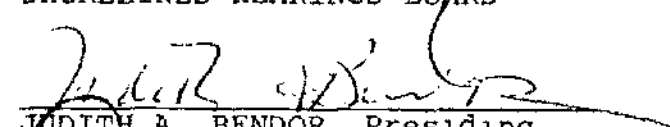
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ORDER

Respondents' Motion to Set Aside the Board's Order of
Dismissal and to Reinstate the Hearing Dates is DENIED.

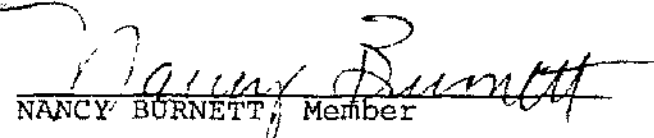
DONE this 12th day of May, 1987

SHORELINES HEARINGS BOARD


JUDITH A. BENDOR, Presiding

 3/12/87
LAWRENCE J. FAULK, Chairman


WICK DUFFORD, Member


NANCY BURNETT, Member

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and 87-7

ORDER OF DISMISSAL

Respondent Kitsap County having rescinded the substantial development permit in the above matter, and appellants having withdrawn their appeals, and there being no case on appeal, now, therefore the Board ORDERS that the appeal be DISMISSED.

1 DONE this 1st day of April, 1987.

2 SHORELINES HEARINGS BOARD

3 Judith A. Bendor 3/30/87
4 JUDITH A. BENDOR, Member

5 Lawrence I. Faulk 3/30/87
6 LAWRENCE I. FAULK, Chairman

7 Wick Dufford
8 WICK DUFFORD, Member

9 Nancy Burnett
10 NANCY BURNETT, Member

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